

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X		
IRWING VELANDIA, on behalf of himself and all	:	
others similarly situated,	:	
	:	
Plaintiff,	:	
	:	
-against-	:	16 Civ. 1799 (AJN)
	:	
SERENDIPITY 3, INC. d/b/a SERENDIPITY 3 and	:	
STEPHEN BRUCE,	:	
Defendants.	:	
-----X		

DIRECT TESTIMONY

AFFIDAVIT OF PLAINTIFF MD MOUDUD AHAMED

State of New York)
) ss.:
County of Queens)

I, Md Moudud Ahamed, being duly sworn and under penalty of perjury, depose and state as follows:

1. I reside in Queens, New York, and I am over 18 years of age.
2. I am a Plaintiff in the above-referenced action, have personal knowledge of the matters stated below, and submit this direct testimony affidavit on behalf of Plaintiff's case-in-chief.

Background

3. I worked at Serendipity 3 located at 225 East 60th Street, New York, NY 10022, as a busser starting the week ending on April 24, 2012 to and including the week ending on January 31, 2014. I also trained at the restaurant for three days before I began to work scheduled shifts.

4. In 2012, I was living with Mohammad Shahjahan, who was then working as a busser at Serendipity 3. He told me about a job opening at Serendipity 3 for a day

time busser. I went to Serendipity 3 and spoke with General Manager Debra Christie ("Christie") about the job. After a brief interview about my experience, she told me I could start training as a busser the following day.

5. Christie did not discuss with me at my interview or after she hired me, and no other Serendipity 3 manager or owner informed me about my regular or overtime rate of pay, whether I would earn tips, or if and how any tips I earned would affect my wages.

6. Throughout my employment as a busser at Serendipity 3, my work responsibilities included, bringing glasses from the kitchen to the work station located in the dining room, filling glasses with water for customers, bringing ice from the basement and putting it in the soda machines, polishing silverware, clearing customers' dishes when they are done, folding napkins, wiping down the tables, cleaning the bathrooms, including stocking paper towels and toilet paper.

7. I did not have any authority to supervise other Serendipity 3 employees, hire or fire employees, or otherwise control their work conditions.

8. During my employment, I regularly worked the day shift, but after a few months I began to work the evening shift.

9. During my employment, the managers at Serendipity 3 were Christie, Justin, and Angel.

Training Period at Serendipity

10. During my interview, Christie said that I was required to train at the restaurant for three days before she put me on the schedule.

11. I was trained by Asep, who worked as a busser.

12. On each day that I trained, I shadowed Asep during the day shift for approximately seven to eight hours each day.

13. For each day of training I was paid \$20 in cash from the cashier.

14. I did not "punch-in" and "punch-out" of the time clock during my training period.

15. I did not receive customer tips during the training period.

16. During one of the days that I was training, Asep showed me the time clock at the restaurant and he told me that when I was finished with my training, I would use a time card to punch-in and punch-out. He also told me that after I punched out, I had to write the amount I received in tips that day on the back of the time card, and then give the time card to a manager, or leave it near the register.

17. To my knowledge and based on my observations, the other bussers wrote their tips on the back of their time cards after they punched out, and gave the time card to a manager or put it on the managers' table near the front desk.

18. It took me about five minutes to write down how much I earned in tips from each server and give it to the manager.

19. After I started working scheduled shifts, I do not recall finding any inaccuracies in the time recorded on the time cards.

20. I reviewed the documents marked SERENDIPITY001692 through SERENDIPITY001875, and I recognize them to be copies of the fronts and backs of some of the time cards I used during my employment at Serendipity 3.

21. I reviewed SERENDIPITY000062 through SERENDIPITY000064 and SERENDIPITY000380 through SERENDIPITY000401, and the hours reported are the same as the hours on my time card.

Minimum Wage Violations

22. Throughout my employment, excluding my training period, I was paid at an hourly rate of \$5.00 for the first forty hours that I was punched in. I was paid more per hour for hours over forty per week that I was punched in.

23. I reviewed the documents marked SERENDIPITY000062 through SERENDIPITY000064, SERENDIPITY000380 through SERENDIPITY000401 and although I have not seen them before, my name and social security number matches the name and last four digits of the social security reflected on the bottom left corner of the pages SERENDIPITY000062 through SERENDIPITY000064. My name also appears on SERENDIPITY000380 through SERENDIPITY000401.

Side Work

24. When I worked the day shift at Serendipity 3, depending on the day of the week, I was required to report to work 1.5 hours to 2.5 hours before the restaurant opened to the public to perform required side work.

25. I was required to and did report to work at 10:00 a.m. Tuesday through Sunday, and 9:30 a.m. on Monday. However, during the restaurant's busy season from November to January, I was required to and did report to work at 9:30 a.m. Tuesday through Sunday, and 9:00 a.m. on Monday for the dayshift.

26. The evening shift ends at approximately 12:00 a.m. Sunday through Thursday, and at approximately 1:00 a.m. on Friday and Saturday.

27. From Monday through Wednesday, there were usually three bussers working, two downstairs and one upstairs. From Thursday to Sunday, two bussers worked upstairs and two bussers worked downstairs.

28. I usually worked five days, but if the restaurant was busy then I worked six days per week.

29. Before Serendipity 3 opened to customers, as part of my side work duties when I worked the day shift, I was required to take chairs down from the tables, stock glasses in the station, and polish silverware. Once I completed these duties, I would sit at a table in the dining room with the other bussers, and fold napkins for between forty-five minutes to one hour. We would then set the tables in the dining room with silverware and napkins.

30. Before Serendipity 3 opened to customers and as I was doing my side work, I observed the servers seated in the dining room putting sugar packets into bowls, and in the kitchen cleaning and stocking their stations.

31. When I worked the evening shift, I arrived a few minutes before 5:00 p.m. and went to the basement of Serendipity 3 to fold napkins with the other bussers working the evening shift for approximately twenty-five minutes.

32. At around 5:25 p.m., I went to dining room floor and made sure there was enough silverware, glasses, and bins to put dirty dishes in. I also checked that the soda machine in the kitchen had ice, and that there was enough paper napkins and toilet paper in the bathroom, and that the bathroom floor was clean. At around 5:30 p.m., the day shift busser would end his shift and I would begin attending to customers.

33. I was also required to and did perform post-shift side work when I worked the evening shift. As part of those duties, I had to clean my station, and put the chairs in the dining room on the tables. This took approximately fifteen minutes, and after I completed these duties, I would clock out and write my tip amounts on my time card.

Ice Cream Scoopers

34. During my training, Asep told me that the servers would give 20% of their daily tips to me. Asep told me that the servers also tipped the ice cream scoopers.

35. The ice cream scoopers were Jorge, Isreal, or Louis. They rotated working the position and at least one was working seven days per week.

36. The ice cream scoopers worked exclusively in the kitchen, and did not interact with customers.

Uniforms

37. During my training, Asep told me that I was required to wear a uniform during my shifts consisting of a Serendipity 3 white t-shirt, black pants, and black shoes.

38. While I was working, all the bussers wore a Serendipity 3 white t-shirt while working at the restaurant.

39. After I completed my training period, I was given three Serendipity 3 logo tee shirts, and Asep told me that if I needed more shirts that I was required to buy them from the restaurant for approximately \$15 each.

40. Throughout my employment, I purchased approximately 10 Serendipity tee-shirts, each costing approximately \$20, for approximately \$200 in total.

41. I only wore the Serendipity tee-shirts when I was working at the restaurant, or commuting to or from the restaurant.

42. Throughout my employment, I washed the Serendipity 3 tee shirts that I received and purchased from the restaurant.

43. Serendipity 3 did not wash my uniform, or pay me for the cost of laundering my own uniform.

Wage Notices

44. I reviewed the document titled "Notice of Pay Rates and Pay Day," SERENDIPITY006407, dated 4/24/2012. I identified that my signature appears on this pay notice.

45. I reviewed the document titled "Notice and Acknowledgement of Pay Rate and Payday," SERENDIPITY006406, dated 2/1/2013. I identified that my signature appears on this pay notice.

46. Beside the documents marked as SERENDIPITY006407 and SERENDIPITY006406, to my knowledge, I did not receive any other written notice of my wage rates.

Stephen Bruce

47. Stephen Bruce ("Bruce") was usually present at Serendipity 3 approximately five days a week.

48. Bruce answered Serendipity 3's telephones, and made guest reservations.

Md Moudud Ahamed
Md Moudud Ahamed

Sworn to me this 30 day of October 2017



Notary Public

LAURA RODRIGUEZ
Notary Public, State of New York
No. 02RO6348091
Qualified in Queens County
Commission Expires September 19, 2020

LAURA RODRIGUEZ
Notary Public, State of New York
No. 02808348091
Qualified in Queens County
Commission Expires September 18, 2021